THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25090 OF 2005

24.11.2005

Between:

Mirza Mohd. Raza, S/o.late Mohd. Akbar

…Petitioner

AND

1. The Municipal Corporation of Hyderabad,
represented by its Commissioner,

Tank Bund Road, Hyderabad
and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25090 OF 2005

ORDER:

The petitioner's father is the tenant of house bearing No.1-8-264, S.P. Road, Secunderabad and running a hotel therein in the name and style of 'New Good Luck Hotel'. The first respondent sent a communication to owner of the premises on 14.6.2005. The same is self-explanatory and reads as under.

> It is to inform you that MCH has taken up road widening proposal of S.P.Road starting from Hyderabad Public School to Y.M.C.A. and proposed

to widen this road to 150'.00" as per ZDP so as to ensure free flow of traffic.

In this regard MCH has taken up the widening of this road under Section 146 & 147 of the HMC Act, 1955 i.e. u/S 146 (private negotiations) & u/S. 147 (Land Acquisition) and we are approaching you u/S146 under private negotiations and your valuable cooperation is required to MCH without which it is not possible to achieve the proposed road width, which is in the interest of pubic at large.

In the said widening proposal your premises bearing No.1-8-264 is getting effected to a depth of 33'.0" to 33'.00" admeasuring 82.81 Sq.Mts plan indicating the effected portion together with consent letter proforma are enclosed and request you to exercise your consent to handover advance possession of the effected area in road widening to MCH in larger interest of public.

The MCH will, however, pay compensation to the other effected structures, if any, as per the structural valuation and extend all benefits as provided in the G.O.Ms.No.483 MA, dt.24.8.1998 for carrying the re-development in the balance area.

The petitioner contends that the action of the respondents in trying to demolish the premises without following the procedure prescribed under Section 147 of the Hyderabad Municipal Corporation Act, 1955 and the Land Acquisition Act, 1894 is illegal. The petitioner further contends that though the notice was sent to owner of the house, the same was not served on the father of the petitioner, who is the tenant.

A reading of the above communication would show that the Municipal Corporation of Hyderabad (MCH) has sought consent of the owner of the premises for advance possession in larger public interest. It does not, however, mean that in the event of tenant of the property not willing to give consent, the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Act. In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the

landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

In this case, the tenant, father of the petitioner, was allegedly not issued any notice seeking willingness/consent to give advance possession to MCH for the road widening project. After issuing notice by the MCH, if the tenant is not willing to give consent to give advance possession, needless to mention that Corporation has to initiate action under the provisions of the Land Acquisition Act, 1894. Till then, the petitioner cannot be deprived of his right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

November 24, 2005.

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Note:

Issue order copy today.

(B/o)

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